

§ 1.1250-4

26 CFR Ch. I (4-1-09 Edition)

of the property disposed of, decreased by the amount of additional depreciation necessary to produce the amount of gain recognized for such element. The additional depreciation for any additional cost element shall be zero.

(iii) The principles of this subparagraph may be illustrated by the following example:

Example: Taxpayer E disposes of a qualified housing project in an approved disposition. The net amount realized is \$1,090,000 of which \$900,000 is attributable to section 1250 property. The section 1250 property consists of (1) a reinvestment element with an adjusted basis of \$300,000, additional depreciation of \$100,000, and an applicable percentage of 50 percent, and (2) an additional cost element with an adjusted basis of \$200,000, additional depreciation of \$50,000, and an applicable percentage of 80 percent. Gain of \$400,000 is realized on the disposition of the section 1250 property, that is, amount realized (\$900,000) minus adjusted basis (\$500,000). Within the reinvestment period, E purchases another qualified housing project at a cost of \$1,000,000 of which \$840,000 is attributable to section 1250 property. E elects, in accordance with section 1039 and the regulations thereunder, to limit recognition of gain (determined without regard to section 1250) to \$90,000, that is, the excess of the net amount realized (\$1,090,000) over the cost of the replacement project (\$1,000,000). Under section 1250(d)(8)(A), the amount of gain recognized under section 1250(a) is limited to \$90,000 (see subparagraph (1) of this paragraph). Under section 1250(d)(8)(F)(ii) and this subparagraph, \$600,000 of the \$900,000 net amount realized attributable to the section 1250 property is allocated to the reinvestment element, that is, additional depreciation for the element (\$100,000) over total additional depreciation (\$150,000) times the net amount realized (\$900,000). The remaining \$300,000 is allocated to the additional cost element. Thus, the gain realized attributable to the reinvestment element is \$300,000, that is, net amount realized (\$600,000) minus adjusted basis (\$300,000). The gain realized attributable to the additional cost element is \$100,000, that is, net amount realized (\$300,000) minus adjusted basis (\$200,000). Under subparagraph (5) of this paragraph, the gain recognized attributable to the section 1250 property is limited to \$60,000, that is, the net amount realized attributable to the section 1250 property disposed of (\$900,000) minus the greater of the adjusted basis of such property (\$500,000) or the cost of the section 1250 property acquired in the transaction (\$840,000). Under section 1250(d)(8)(F)(ii) and this subparagraph, \$45,000 of the \$60,000 gain recognized is attributable to the reinvestment element, that is, \$60,000

multiplied by a fraction whose numerator is the gain realized attributable to the reinvestment element (\$300,000) and whose denominator is the total gain realized attributable to all the section 1250 property (\$400,000). The remaining \$15,000 of the gain recognized is attributable to the additional cost element. The new property acquired has no additional cost element. The reinvestment element of the new property acquired consists of 2 subelements corresponding to the reinvestment element and additional cost element of the property disposed of. The subelement corresponding to the reinvestment element has additional depreciation of \$10,000, that is, its additional depreciation immediately before the disposition (\$100,000), minus \$90,000, the amount of additional depreciation necessary to produce \$45,000 of section 1250(a) gain where the applicable percentage is 50 percent. The subelement corresponding to the additional cost element has additional depreciation of \$31,250, that is, its additional depreciation immediately before the disposition (\$50,000), minus \$18,750, the amount of additional depreciation necessary to produce \$15,000 of section 1250(a) gain where the applicable percentage is 80 percent.

[T.D. 7084, 36 FR 275, Jan. 8, 1971, as amended by T.D. 7193, 37 FR 12957, June 30, 1972; T.D. 7400, 41 FR 5101, Feb. 4, 1976; 41 FR 7095, Feb. 17, 1976]

§ 1.1250-4 Holding period.

(a) *General.* In general, for purposes only of determining the applicable percentage (as defined in section 1250 (1)(C) and (2)(B)) of section 1250 property, the holding period of the property shall be determined under the rules of section 1250(e) and this section and not under the rules of section 1223. If the property is treated as consisting of two or more elements (within the meaning of paragraph (c)(1) of § 1.1250-5), see paragraph (a)(2)(ii) of § 1.1250-5 for application of this section to determination of holding period of each element. Section 1250(e) does not affect the determination of the amount of additional depreciation in respect of section 1250 property.

(b) *Beginning of holding period.* (1) For the purpose of determining the applicable percentage, in the case of property acquired by the taxpayer (other than by means of a transaction referred to in paragraph (c) or (d) of this section), the holding period of the property shall begin on the day after the date of its acquisition. See section 1250(e)(1)(A).

Thus, for example, if a taxpayer purchases section 1250 property on January 1, 1965, the holding period of the property begins on January 2, 1965. If he sells the property on October 1, 1966, the holding period on the day of the sale is 21 full months, and, accordingly, the applicable percentage is 99 percent. This result would not be changed even if the property initially had been used solely as the taxpayer's residence for a portion of the 21-month period. If, however, the property were sold on September 30, 1966, the holding period would be only 20 full months.

(2) For the purpose of determining the applicable percentage in the case of property constructed, reconstructed, or erected by the taxpayer, the holding period of the property shall begin on the first day of the month during which the property is placed in service. See section 1250(e)(1)(B). Thus, for example, if a taxpayer constructs section 1250 property and places it in service on January 15, 1965, its holding period begins on January 1, 1965. If the taxpayer sells the property on December 31, 1966, its holding period on the day of sale is 24 full months, and, accordingly, the applicable percentage is 96 percent. For purposes of this subparagraph, property is placed in service on the date on which it is first used, whether in a trade or business, in the production of income, or in a personal activity. Thus, for example, a residence constructed by a taxpayer for his personal use is placed in service on the date it is occupied as a residence. For purposes of determining the date property is placed in service, it is immaterial when the period begins for depreciation with respect to the property under any depreciation practice under which depreciation begins in any month other than the month in which the property is placed in service. If one or more units of a single property are placed in service on different dates before the completion of the property, see paragraph (c)(3) of § 1.1250-5 (relating to treatment of each such unit as an element).

(c) *Property with transferred basis.* Under section 1250(e)(2), if the basis of property acquired in a transaction described in this subparagraph is determined by reference to its basis in the hands of the transferor, then the hold-

ing period of the property in the hands of the transferee shall include the holding period of the property in the hands of the transferor. The transactions described in this subparagraph are:

(1) A gift described in section 1250(d)(1).

(2) Certain transfers at death to the extent provided in paragraph (b)(2)(ii) of § 1.1250-3.

(3) Certain tax-free transactions to which section 1250(d)(3) applies. For application of section 1250(d)(3) and (e)(2) to a distribution by a partnership to a partner, see paragraph (f)(1) of § 1.1250-3.

(4) A transfer described in paragraph (e)(4) of § 1.1250-3 (relating to transaction under section 1081(d)(1)(A)).

(d) *Principal residence acquired in certain transactions.* The holding period of a principal residence acquired in a transaction to which section 1034 and paragraph (g)(6) of § 1.1250-3 apply includes the holding period of the principal residence disposed of in such transaction. See section 1250(e)(3). The holding period of a principal residence acquired does not include the period beginning on the day after the date of the disposition and ending on the date of the acquisition.

(e) *Application of transferred basis and principal residence rules.* The determination of holding period under this section shall be made without regard to whether a transaction occurred prior to the effective date of section 1250 and without regard to whether there was any gain upon the transaction. Thus, for example, under paragraph (c) of this section a donee's holding period for property includes his donor's holding period notwithstanding that the gift occurred on or before December 31, 1963, or that there was no additional depreciation in respect of the property at the time of the gift.

(f) *Qualified low-income housing project acquired in certain transactions.* The holding period of a *reinvestment element* (and of subelements thereof) of section 1250 property (as defined in paragraph (h)(2) of § 1.1250-3) acquired in a transaction to which sections 1039(a) and 1250(d)(8)(A) apply includes the holding period of the corresponding element of the section 1250 property disposed of.

See section 1250(e)(4). The holding period of the *additional cost element* (as defined in paragraph (h)(2) of § 1.1250-3) begins on the date the replacement project is acquired. The holding period of a *reinvestment element* of section 1250 property does not include the period beginning on the day after the date of the disposition and ending (1) on the date of the acquisition of the replacement housing project, or (2) on the date the replacement housing project constructed or reconstructed by the taxpayer is placed in service.

(g) *Cross reference.* If the adjusted basis of the property in the hands of the transferee immediately after a transaction to which paragraph (c) or (d) of this section applies exceeds its adjusted basis in the hands of the transferor immediately before the transaction, the excess is an addition to capital account under paragraph (d)(2)(ii) of § 1.1250-5 (relating to property with two or more elements).

[T.D. 7084, 36 FR 281, Jan. 8, 1971, as amended by T.D. 7400, 41 FR 5103, Feb. 4, 1976]

§ 1.1250-5 Property with two or more elements.

(a) *Dispositions before January 1, 1970—*

(1) *Amount treated as ordinary income.* If section 1250 property consisting of two or more elements (described in paragraph (c) of this section) is disposed of before January 1, 1970, the amount of gain taken into account under section 1250(a)(2) shall be the sum, determined in three steps under subparagraphs (2), (3), and (4) of this paragraph, of the amounts of gain for each element.

(2) *Step 1.* The first step is to make the following computations:

(i) In respect of the property as a whole, compute the additional depreciation (as defined in section 1250(b)), and the gain realized. For purposes of this paragraph, in the case of a transaction other than a sale, exchange or involuntary conversion, the gain realized shall be considered to be the excess of the fair market value of the property over its adjusted basis.

(ii) In respect of each element as if it were a separate property, compute the additional depreciation for the element, and the applicable percentage (as defined in section 1250(a)(2)) for the element. For additional depreciation in

respect of an element of property acquired in certain transactions, see paragraph (e) of this section. For purposes of determining additional depreciation, the holding period of an element shall be determined under section 1223, applied by treating the element as a separate property. However, for the purpose of determining applicable percentage, the holding period for an element shall, except to the extent provided in paragraphs (c)(5), (e), and (f) of this section, be determined in accordance with the rules prescribed in § 1.1250-4.

(3) *Step 2.* The second step is to determine the amount of gain for each element in the following manner:

(i) If the amount of additional depreciation in respect of the property as a whole is equal to the sum of the additional depreciation in respect of each element having additional depreciation, and if such amount is not more than the gain realized, then the amount of gain to be taken into account for an element is the product of the additional depreciation for the element, multiplied by the applicable percentage for the element.

(ii) If subdivision (i) of this subparagraph does not apply, the amount of gain to be taken into account for an element is the product of:

(a) The additional depreciation for the element, multiplied by

(b) The applicable percentage for the element, and multiplied by

(c) A ratio, computed by dividing (1) the lower of the additional depreciation in respect of the property as a whole or the gain realized, by (2) the sum of the additional depreciation in respect of each element having additional depreciation.

(4) *Step 3.* The third step is to compute the sum of the amounts of gain for each element, as determined in step 2.

(5) *Examples.* The provisions of this subparagraph may be illustrated by the following examples:

Example 1. Gain of \$35,000 is realized upon a sale, before January 1, 1970, of section 1250 property which consists of four elements (W, X, Y, and Z). Since on the date of the sale the amount of additional depreciation in respect of the property as a whole (\$24,000) is